UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTER, NEW YORK,	:	Case No. 20-12345 (MG)
Debtor.	:	
THE ROMAN CATHOLID DIOCESE OF ROCKVILLE CENTER, NEW YORK,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 20-01226 (MG)
ARK320 DOE, *et al.*,	:	
Defendants.	:	

PLAINTIFF MARY VERARDI'S OBJECTION TO THE PROPOSED STIPULATION AND CONTINUANCE OF THE PRELIMINARY INJUNCTION AS APPLIED TO NEW YORK SUPREME COURT CASE 616239/2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Plaintiff Mary Verardi ("Plaintiff"), as mother and legal guardian for her son James Verardi, hereby Objects to the extension sought by debtor and moves to vacate this Court's preliminary injunction (the "Injunction," and this motion the "Motion to Vacate"). Specifically, Verardi objects to the injunction as it relates to her son's State Court Child Victims Act matter, improperly stayed due to this Court's preliminary injunction in DRVC's Chapter 11 proceeding, requested by DRVC to widen in scope as it related pending litigation involving various third-party entities due to unspecified and unsubstantiated allegations of connectedness with the DRVC. It took James Verardi, Mary Verardi's severely developmentally handicapped son nearly 30 years to put the pieces together in his mind that while a patient/resident at Maryhaven Center for Hope [established to offer full time on site residential care for the needs of the developmentally challenged] he was repeatedly raped and sexually attacked by other patient/residents while staff watched, facilitated and encouraged said conduct. The DRVC would have this Court believe that its filing for bankruptcy relief was a result of a significant number of third-party filings in New York State Court under the Child Victims Act permitting now adults to sue for compensation stemming from sexual assault and violence when those adults were minors. Rather, and which seems to have been forgotten, the DRVC is in this predicament attempting to shield its vast Estate by reorganization because the individuals and entities under its employ and association intentionally engaged in egregious wrongdoing.

In the Verardi matter, the prime defendant is Maryhaven Center of Hope, an entity which is not a debtor in this Chapter 11 proceeding but purportedly an inextricably related entity so much so that possible relief to plaintiff as against Maryhaven would work a detriment and hardship to the DRVC and its creditors. Upon information and belief, the sole contention by DRVC as to why

and how the DRVC is connected to Maryhaven is that for an identified period of time, the DRVC maintained a self-insured retention under which Maryhaven was a direct insured. Further, the DRVC maintained excess policies of liability coverage comprised of DRVC assets under which Maryhaven was a direct insured. Upon information and belief, the DRVC has not exchanged one document demonstrating it provided self-insured or excess coverage for the benefit of Maryhaven as it would relate to instances of sexual misconduct and assault. Notwithstanding DRVC's insistence of a connection by way of insurance coverage in favor of Maryhaven and procured by the DRVC, Verardi's counsel lacks any documentation attesting to such connection as the Supreme Court did not require the DRVC to provide same when it inequitably granted the stay application robbing Verardi of her day in Court. Curious that all counsel needed and still needs to show was one piece of paper representing a minor settlement of a Maryhaven liability case from a DRVC or affiliated account and this inquiry by your affirmant would be over. Whose interests are being served by Maryhaven' s CVA cases to be swept under the preliminary injunction of DVRC's bankruptcy proceeding? A year has passed since the State Court stayed Verardi's case and that same insufficient basis to hold Maryhaven under the power of the preliminary injunction holds true. We are no closer one year later to discovering the competent basis to Maryhaven' s inclusion in the subject preliminary injunction and why Verardi remains uncompensated. Did the DRVC procure the only insurance for Maryhaven which would be applicable to covering the losses which Verardi alleges it sustained? That is the unanswered question your affirmant asked of Maryhaven' s counsel one year ago in State Court and I ask of the DRVC now. Verardi and this Court are entitled to this proof. James Verardi had to wait (30) years until he was capable of coming to terms that he was the victim of early childhood sexual assault. He should not have to wait one more day

for evidence which should have been produced by the DRVC and Maryhaven last year upon the initial request for a stay of all proceedings as it related to Maryhaven.

PROCEDURAL HISTORY

On August 20, 2021, Plaintiff Mary Verardi, as mother and legal guardian for her son James Verardi, commenced a civil action in New York State Supreme Court against Maryhaven Center of Hope, Inc. ("Maryhaven"), Catholic Health Services of Long Island ("Catholic Health," and together with Maryhaven, the "Corporate Defendants"), and two individuals, David Woods and Nicholas Manatro (hereinafter, the "New York Action"). The New York Action was brought pursuant to the Child Victim's Act (the "CVA") and seeks redress for sexual abuse suffered by James Verardi when he was a young boy with cerebral palsy living as a resident of Maryhaven in the early 1990s.

The Plaintiff Mary Verardi and her son James have yet to have their day in Court. In fact, their case has been stuck at a stand-still for over a year, not having moved an inch since the Plaintiff's filing of a Summons with Notice. Plaintiff's counsel first became aware of the potential roadblock on September 27, 2021, when counsel for Maryhaven and Catholic Health, Brian R. Davey, filed a letter in the underlying New York Action, essentially requesting that the case be stayed and informing the New York court that he would soon be filing in the New York Action "a Notice of Bankruptcy with the extension of the stay in connection with the bankruptcy proceeding of the Diocese of Rockville Centre as soon as this lawsuit [the New York State action] gets added to the list in the bankruptcy proceeding which should be in mid-October."

No explanation was provided in that letter of why a case against two corporate entities which would not be entering bankruptcy was to be stayed in connection with the imminent Chapter 11 filing of the Diocese of Rockville Center, N.Y., the above-captioned debtor and debtor in

possession (the "Debtor" or the "DRVC"). Plaintiff's counsel promptly filed a letter in the New York Action objecting to Mr. Davey's request and noted several areas wherein Mr. Davey had failed to provide information relevant to the question of whether a stay would be in any way appropriate considering the specific circumstances of Plaintiff's case. Neither Mr. Davey nor any other counsel for the Corporate Defendants in the New York Action has yet to provide Plaintiff's counsel with that information. This is part and parcel of how Plaintiff's case has been subsumed by this bankruptcy proceeding without any factual demonstration by counsel for the New York Action Corporate Defendants, or counsel for the Debtor, of *why*, exactly, Plaintiff's New York Action specifically should be stayed. Plaintiff hoped that this Court would soon be dealing with some of the issues raised herein on a case-wide basis during a hearing on the merits of the Debtor's preliminary injunction motion, but those hopes have, once again, been dashed, this time by the filing on September 12 of a Notice of Presentment of Proposed Order [D.E. 141]. Should the terms of the proposed order go into effect, the stay of Plaintiff's CVA case will not, absent plan confirmation, be lifted until January 14, 2023, at the earliest.

This is unacceptable. First, the DRVC is not a named defendant in the Verardi State Court action. Plaintiff has not named the Bishop as a defendant, or any other "key personnel," nor any parish or other close affiliate of the DRVC. Rather, the principal defendant is Maryhaven, a not-for-profit residential and day facility incorporated in 1987 for the purpose of providing care to special needs individuals. Until the end of 2021, Maryhaven' s sole member was Catholic Health Systems of Long Island, Inc., (d/b/a Catholic Health), a New York not-for-profit corporation affiliated with the DRVC. Maryhaven was swept within the broad reach of the first Consent Order's[1] preliminary injunction presumably because, given this affiliation, Maryhaven was

[1] *See* the Stipulation and Order dated January 22, 2021 [D.E. 59].

covered by certain insurance policies and self-insured retainers either procured or provided by the Debtor to Maryhaven' s benefit.[2] Beyond that, there is no sensible explanation. It cannot be that Maryhaven is so intrinsically connected to so much of the litigation that allowing cases involving it to move forward would run the risk of collateral estoppel issues: according to the chart submitted by the Debtor as Schedule 1 to the Stipulation and Agreed Order dated August 8, 2022 (the August 8 Extension), which contains a list of all extant CVA lawsuits stayed in state court, ***Maryhaven is a named defendant in only three of the over 500 stayed cases***.[3] It certainly cannot be that allowing Plaintiff's suit to proceed would unduly distract "key personnel" from their efforts in connection with the Debtor's reorganization; again, there are only two active cases naming Maryhaven as a defendant, and, what's more, it is no longer October 2020, when this bankruptcy commenced – the heaviest work of getting the boat out to sea has been done. As observed in similar circumstances, "[k]ey personnel are well beyond the scramble for information that is typical in the early stages of a large Chapter 11 case." *In re Diocese of Rochester*, No. AP 22-02075-PRW, 2022 WL 1638966, at *6 (Bankr. W.D.N.Y. May 23, 2022). And it certainly cannot be the mere fact that Maryhaven is purportedly covered by an SIR procured by the DRVC or an insurance policy comprised of DRVC assets under which Maryhaven qualifies and is named as an insured. Reason being is that your affirmant advised the Supreme Court in the Verardi matter of counsel for Maryhaven' s failure to satisfy any burden of proof by not producing competent evidence which would have satisfied counsel's burden of proof and also rendered counsel for Verardi's objection as moot. The Supreme Court granted the application for stay notwithstanding its absence of proof. The Supreme Court

[2] Plaintiff's counsel has not been provided any documentary evidence that would establish this fact, despite inquiring, in the letter submitted to the New York Action court on September 27, 2021, as to Maryhaven and Catholic Health's insurance coverage.

[3] And only two of the listed index numbers return case records when searched for in New York Supreme Court's case database.

apparently left the inquiry into the whereabouts of competent proof as to connectedness to the Bankruptcy Court to ascertain. To that end, counsel for Verardi objects to any further extension of time relative to the preliminary injunction for that same evidentiary burden still remains unsatisfied. This Honorable Court should respectfully not permit the continuance of the injunction not because of the lack of irreparable harm the DRVC would sustain should the injunction get lifted as to Maryhaven but the irreparable harm facing Verardi should the injunction continue ultimately precluding her receipt of justice and compensation.

Finally, this Court should be apprised that Maryhaven itself does not believe it is subject to this Court's preliminary injunction because it effectively sold itself to another non-profit organization by way of Member Substitution Agreement dated January 1, 2022. One would think an entity falling in one way or another under the protections of a preliminary injunction of a third party from which it allegedly derives a financial benefit in the form of insurance coverage over a considerable number of years would have at least consulted or advised this Court of its sale. Certainly if the DRVC was so inextricably intertwined with Maryhaven, its counsel would have received notice of Maryhaven's sale to a non-profit entity not a party to the preliminary injunction and should have, at the very least, notified this Court and parties.

On December 29, 2021, *Maryhaven was sold to a third-party,* and is now owned and operated by Independent Group Home Living Program, Inc ("IGHL").[4] As discussed further below, the fact of this transfer, and the terms governing the transaction, weigh heavily in favor of lifting the injunction against prosecution of Plaintiff's suit, especially since, as described below,

[4] The transfer of ownership was effected via a "Membership Substitution Agreement" (hereinafter the "Substitution Agreement"). The Substitution Agreement is attached as Exhibit 1 to the *Declaration of Ian Kaufman in support of Plaintiff Mary Verardi's Objection,* dated September 19, 2022, filed in connection herewith (hereinafter the "Kaufman Decl.").

this Court can exercise its broad equitable powers to alleviate any concerns the Debtor may have in regard to the potential dissipation of insurance funds. The member substitution agreement curiously represents (4.1 (d)),

> Neither CH nor Maryhaven is insolvent. No bankruptcy, insolvency, reorganization, or similar action pending, whether voluntary or involuntary is pending, or threatened or anticipated against CH or Maryhaven. Either CH nor Maryhaven has filed or has been the subject of any bankruptcy, insolvency, reorganization, or any other similar action or proceeding whether voluntary or involuntary.

The above language used to represent itself by Maryhaven in an agreement it hopes will be enforceable implies, at least counsel, that Maryhaven has no connection whatsoever to any pending or anticipated bankruptcy proceeding. Maryhaven faces three CVA matters wherein recovery could be sizeable. The lack of at least one reference to the DRVC in the body of the agreement without any meaningful description of the implication of the DRVC's bankruptcy on Maryhaven (with the exception of rendering three CVA cases stayed, See Schedule 1 raises serious concerns and questions as to the degree and scope of connectedness between Maryhaven and the DRVC as to not have warranted this Court from being notified of the sale.

The preliminary injunction as it relates to Maryhaven should be vacated.

ARGUMENT

I. There Is No Basis For A Preliminary Injunction Enjoining Plaintiff's Case

Plaintiff does not intend to repeat at length the arguments made by the Official Committee of Unsecured Creditor's Objection to Debtor's Motion for a Preliminary Injunction.[5] Suffice to say that the Committee is correct that, on the facts of this case, the automatic stay of Bankruptcy Code § 362(a) does not apply to state court non-debtor defendants. More importantly, and succinctly put for our purposes, another court in this Circuit has come to that conclusion: "parishes and other [a]ffiliated [e]ntities …do not enjoy the benefit of the stay that § 362(a)(1) gives to a debtor." *The Diocese of Buffalo*, N.Y. v. JMH Doe, et al. (In re The Diocese of Buffalo, N.Y.), 618 B.R. 400, 405 (Bankr. W.D.N.Y. 2020).

The Debtor has also advanced the secondary argument that "under [bankruptcy code] section 105(a), 'the bankruptcy court may enjoin proceedings in other courts when it is satisfied that such a proceeding would defeat or impair its jurisdiction with respect to a case before it.'" Injunction Motion, D.E. 3, at 16 (*quoting McHale v. Alvarez (In re The 1031 Tax Group, LLC)*, 397 B.R. 670, 684 (Bankr. S.D.N.Y. 2008)). With respect to injunctions under 105(a), courts apply the "traditional preliminary injunction standard as modified to fit the bankruptcy context" *Nev. Power Co. v. Calpine Corp. (In re Calpine Corp.),* 365 B.R. 401, 409-14 (S.D.N.Y. 2007), *see also Matter of Johns-Manville Corp.,* 26 B.R. 405, 415 (Bankr. S.D.N.Y. 1983), *aff'd sub nom. In re Johns-Manville Corp.,* 40 B.R. 219 (S.D.N.Y. 1984) ("Section 105 of the Code was not intended to grant the bankruptcy court powers without bounds" and must satisfy requirements of FRCP 65). Thus, to obtain a preliminary injunction in the bankruptcy context a plaintiff must demonstrate:

[5] D.E. 17 (hereinafter "Comm. Opp. Br.").

(1) either a likelihood that he will succeed on the merits of his claim, or that the merits present serious questions for litigation and the balance of hardships tips decidedly toward the plaintiff; and **(2)** that without the injunction, he will likely suffer imminent irreparable harm before the court can rule upon his claim. *Fisher-Price, Inc. v. Well-Made Toy Mfg. Corp.,* 25 F.3d 119, 122 (2d Cir. 1994).

In the bankruptcy context, courts construe the risk of "irreparable harm" to mean that there must be an *imminent and substantial* threat to the reorganization process posed by the action sought to be enjoined. *In re Calpine Corp.*, 365 B.R. at 410 **("[T]he threat to the reorganization process must be imminent, substantial and irreparable.")** (emphasis added). A party cannot prevail on a preliminary injunction motion absent a showing of imminent, irreparable harm, *which must be more than a mere possibility*. 3 COLLIER ON BANKRUPTCY ¶ 7065.02 (internal citations omitted). Critically to this Objection, it is the debtor that bears the burden of proof in seeking to enjoin litigation against a nondebtor. *In re Third Eighty-Ninth Assocs.*, 138 B.R. 144, 146 (S.D.N.Y. 1992); *In re Anje Jewelry Co.*, 47 B.R. 485, 487 (Bankr. E.D.N.Y. 1983). A preliminary injunction, while a tool of equity, is an "extraordinary and drastic remedy which should not be routinely granted except upon a clear showing that the movant has carried its heavy burden." *In re Anje Jewelry Co., Inc.,* 47 B.R. at 487 (citation omitted).

The Debtor has not even approached the high bar the law requires. Here, the Debtor has argued that allowing the state court cases to move forward with their actions against non-debtor defendants will threaten the reorganization process by depleting insurance proceeds, creating the risk of collateral estoppel and res judicata issues, and diverting the attention of key personnel away

from the task of reorganization.[6] But none of these arguments hold water in the context of a case, like Plaintiff's, that names only Maryhaven as a corporate entities, and, as mentioned previously, only three of the over 500 cases on Debtor's recent list of CVA cases names Maryhaven as a Defendant (and only two of those cases appears to be active in New York State Supreme Court). **Most importantly, the critical issue, the only one upon which any argument of actual, substantial harm could rest – the extent of its relevant insurance coverage – Debtor has offered nothing beyond "because the DRVC Related Parties are co-insureds with the Debtor, the State Court Actions will have an immediate adverse economic consequence for the debtor's estate' by diminishing the estate's insurance assets." Injunction Motion, at 20.**

The Debtor has made no attempt to demonstrate that the amount of insurance available is likely to be insufficient to pay all claims, overall, or, as is relevant here, that there will likely be a shortfall for insurance proceeds in a defined insurance period for a defined subset of claims.[7] Indeed, for purposes of deciding this Objection, the operative inquiry is whether a recovery by Plaintiff would require funding from a source that was in real, substantial, *demonstrable* danger of dissipation such that a recovery by plaintiff would operate necessarily as an injury to other creditors. In that regard, it is important to note that the abuse suffered by the Plaintiff took place in the early 90s, entirely within the "Ecclesia" insurance coverage period which began in 1986 (the

[6] *See, e.g.*, D.E. 4, *Declaration of Charles Moore in support of the Injunction Motion* (the "Moore Decl."), at ¶¶ 5-10.

[7] *See also* Comm. Opp. Br. at ¶ 50: "Though the Debtor claims that 'every dollar of insurance indemnification received by the DRVC Related Parties is one less dollar available to the Debtor's estate for payment of that claim' (Injunction Motion, at 20), the Debtor has made no factual showing that the exposure of the DRVC Related Parties and the Debtor itself on any one claim will require payment of the entire policy limits, particularly on claims triggering multiple policy periods, and particularly in years during which large umbrella limits are also available."

"Ecclesia Period").[8] A review of the most recent listing of stayed CVA cases filed along with the August 8 Extension indicates that the cases for which the abuse allegations are localized wholly within the Ecclesia Period are a very small fraction of universe of stayed cases. Given the only possible basis for the staying of Plaintiff's litigation is the *material* (not merely theoretical) possibility of irreparable harm to the Debtor's estate via dissipation of insurance proceeds, the Debtor should be required to make a prima facie showing that, *specifically with regard to insurance proceeds under the Ecclesia Period,* there is a significant – indeed, an imminent, substantial and irreparable – risk of running out of money to fund settlements in cases for which abuse allegations are localized within that period. If the Debtor cannot make that showing, the Court should grant this motion.[9]

---

[8] *See* Injunction Motion, at 10. As per the Injunction Motion,

> "Ecclesia Assurance Company ("Ecclesia") is the sole provider of insurance for the DRVC and the DRVC Related Parties for alleged sexual abuse after August 31, 1986.[9] Ecclesia is a captive insurance company that provides insurance to the DRVC. It is a separate corporation that is owned by the DRVC" which "began providing insurance coverage in 2003 for sexual abuse claims made during the Ecclesia policy periods that allege wrongful acts after August 31, 1986."

Id., at 8, and fn. 9. Should the DRVC take the position that there is insufficient coverage for claims made during the Ecclesia Period, this raises an interesting question: what historical information and data did DRVC have in 2003 regarding sexual abuse claims, and, relatedly, about the amounts in settlements and/or damages paid in connection with those claims? The answer to this question is important because it implicates a related inquiry: if the coverage provided by Ecclesia to DRVC is less robust than that provided by third-party insurers in previous periods, why is that the case? One would think a "captive" insurance company "wholly owned by the DRVC" would provide the DRVC with insurance coverage for sexual abuse claims that was as robust or even better than the third-party coverage it had maintained previously, especially given the larger universe of data DRVC had to draw upon to value its potential liabilities.

[9] **Furthermore, the Debtor has made no representation that Maryhaven did not and does not have its own insurance coverage outside of that for which DRVC is the named insured. If Maryhaven does have separate insurance coverage, the Court should grant this motion**.

Thus far, the Debtor has not come close to making the requisite showing, instead choosing to rely on broad-strokes 'trust me' arguments that its reorganization is dependent on this Court denying state-court plaintiffs their day in Court against solvent, independent, non-Debtor corporations, and other individuals. The court in *The Diocese of Rochester* rejected blanket-statement arguments identical to the Debtor's here, noting that

> the Diocese made no effort to provide evidence showing that a specific CVA case would have a materially adverse impact on the per-occurrence limits of a specific policy of insurance. Instead, the Diocese invites the court to make a leap of faith and find that any state court litigation by any Abuse Survivor against any Catholic Corporation will necessarily adversely affect property of the Diocese's Estate. The Court declines that invitation.

In re Diocese of Rochester, 2022 WL 1638966, at *5; *see also In re Granite Partners, L.P.,* 194 B.R. 318, 338 (Bankr. S.D.N.Y. 1996), corrected (Apr. 16, 1996) (mere threat to D&O policy did not support injunction against third party lawsuits). This Court should similarly decline to extend any further this Debtor's requests for injunctive relief on similarly threadbare support. In sum, to the extent that the DRVC, Catholic Health, and Maryhaven are co-insureds under certain insurance policies, the issue is whether a recovery against Maryhaven in Plaintiff's case could threaten to deplete the insurance proceeds available to the estate to pay similarly situated claims. If the DRVC cannot make a prima facie showing that a recovery against Maryhaven would necessarily run the risk of imperiling the Debtor's reorganization writ large, then this Court should grant this Motion.

II. The Fact That Maryhaven Was Sold To A Third-Party Weighs Heavily In Favor Of Lifting the Injunction On Prosecution of Plaintiff's Claims

As mentioned above, until the end of 2021, Maryhaven' s sole member was Catholic Health Systems of Long Island, Inc., (d/b/a Catholic Health), a New York not-for-profit corporation affiliated with the DRVC. However, on December 29, 2021, Maryhaven was sold, and is now owned and operated by IGHL. Pursuant to the Substitution Agreement governing the transaction, IGHL replaced Catholic Health as the sole corporate member of Maryhaven, and agreed "to

assume all of the rights, obligations and liabilities of Maryhaven as a member of a New York not-for-profit corporation." *See* Kaufman Decl., Exhibit 1, at § 1.1.[10] Indeed, attached as Exhibit B to the Substitution Agreement is an Amendment to the Certificate of Incorporation for Maryhaven[11], which demonstrates that this transfer of ownership effectively removes Maryhaven from the ambit of the Diocese and Catholic Health's control:

> 3. The certificate of incorporation is amended as follows:
>
> a. To amend paragraph NINTH to amend the dissolution clause to remove references to the word "Catholic" and the reference to the Roman Catholic Diocese of Rockville Centre, New York. …
>
> b. To delete in its entirety paragraph TENTH, which requires the Corporation to follow the tenets of the Roman Catholic Church and to adhere to the ethical and religious directives of the Ordinary of the Diocese of Rockville Centre New York.
>
> c. To amend paragraph ELEVENTH to delete the reference to the Ordinary of the Diocese of Rockville Centre, New York, and to omit the reference to the initial directors of the Corporation....

Finally, the Substitution Agreement contains an Indemnification provision that

> **8.1 Indemnification by CH.** If Closing occurs, CH will indemnify, defend, and hold harmless IGHL and each of IGHL's officers, directors, employees, and/or agents against any and all claims, liabilities, settlements, judgments, and costs, including reasonable attorney fees attributable to the negligence, action, inaction, or omissions of CH or any of its officers, directors, employees, and/or agents in connection with the execution or performance

[10] Interestingly enough, in the Substitution Agreement, Maryhaven represented that that "Neither [Catholic Health] nor Maryhaven is insolvent. No bankruptcy, insolvency, reorganization, or similar action or proceeding, whether voluntary or involuntary, is pending, or threatened or anticipated against CH or Maryhaven. Neither CH nor Maryhaven has filed for or has been the subject of any bankruptcy, insolvency, reorganization, or any other similar action or proceeding, whether voluntary or involuntary." *See.* Kaufman Decl., Exhibit 1, at § 4.1(d). While one might argue over the precise meaning of what it means to be "the subject of" a bankruptcy proceeding, certainly it is true that Catholic Health and Maryhaven have been subjected to *this* bankruptcy proceeding, and protected by its shield, without being subject to any of the attendant burdens that typically come along with it, e.g., the requirement that an entity in bankruptcy receive court approval before any transfer of assets.

[11] According to the New York State's Department of State – Divisions of Corporations website, a Certificate of Amendment was filed for Maryhaven on January 6, 2022.

> of its responsibilities prior to the Closing. Without limiting the foregoing, ***CH will indemnify and hold harmless Maryhaven and IGHL with regard to any losses, damages or claims resulting from or in connection with the lawsuits set forth in Schedule 1.***

(emphasis added). Schedule 1 contains, inter alia, the three CVA cases referenced in the chart appended to the August 8 Extension. Thus, per the terms of the Substitution Agreement, were a Plaintiff in one of the two live CVA actions against Maryhaven to succeed in winning a judgement against Maryhaven, Catholic Health is required to indemnify IGHL fully in the amount of that judgment. Which is to say: there is now another source of potential recovery for Plaintiff's claims beyond the insurance coverage Maryhaven shares with the Debtor, i.e., the assets of Catholic Health – another free-standing, solvent corporation that is being shielded by the protections afforded to a debtor-in-possession under the Bankruptcy Code, without the related obligations that a debtor must undertake in exchange for such protections, such as limitations on asset transfers and transparency regarding pre- and post-petition transactions.

These entities should not be permitted to have it both ways. If Catholic Health and Maryhaven can, without regard to this bankruptcy process, enter into sale agreements and negotiate consideration which includes bartering an indemnification for contingent litigation liabilities, then Catholic Health and Maryhaven should be able to live with the rewards and the risks of that bargain – one of which is the possibility that Catholic Health may have to pay Maryhaven the costs of any recovery by Plaintiff, out of whatever asset sources Catholic Health. Catholic Health does not face the possibility of facing down over 500 CVA cases worth of damages because of this indemnity provision; rather, the figure here has been whittled down to the two active cases disclosed in schedule 1 to the Substitution Agreement – a much more manageable number, and one that does not warrant the extraordinary remedy of a federal court staying state court litigation against a non-debtor entity that is no longer even affiliated with the Debtor in any capacity. And as for

Maryhaven, the Substitution Agreement makes clear that it has substantial assets from which to draw funds for a recovery – nearly $13 million in assets were transferred to IGHL under the Substitution Agreement. *See* Exhibit 1, Substitution Agreement, Exhibit C ("Purchase Price Breakdown"). In sum, this transfer of ownership is another clear indication that permitting Plaintiff's CVA action to continue to be enjoined, while the entities protected by the stay of state court litigation do not have to abide by any of the usual restrictions that attend it, does not promote the public interest the Bankruptcy Code is intended to advance – it perverts it. This Court should grant the relief requested herein and allow Plaintiffs to have their day in court.

III. The Court Can Exercise Its Broad Equitable Powers to Alleviate Any Concerns The Debtor May Have In Regard To Insurance Funds

In *Diocese of Rochester* the court noted that

> Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents. . . . In awarding a preliminary injunction a court must also "conside[r] . . . the overall public interest." In the course of doing so, a court "need not grant the total relief sought by the applicant but may mold its decree to meet the exigencies of the particular case." *Trump v. Int'l Refugee Assistance Project,* 137 S. Ct. 2080, 2087 (2017) (citations omitted).

In re Diocese of Rochester, 2022 WL 1638966, at *4.

Considering this in the context of the questions before it, the *Rochester* court crafted an opinion that permitted the abuse survivors cases against solvent, non-debtor corporations to proceed, while also

> *prohibiting* any Abuse Survivor from attempting to execute against or gain access to the proceeds of any insurance policy naming the Diocese as a covered co-insured, without the express permission of this Court in the form of an order, following a motion on notice to all parties in interest. ***This prohibition does not extend to any policy of insurance naming only a Catholic Corporation and it does not extend to other assets owned in the name of a Catholic***

> ***Corporation.*** The Court molds the relief being granted to the Abuse Survivors in consideration of the overall public interest in allowing the Abuse Survivors to seek relief against the non-debtor Catholic Corporations in state court.

In re Diocese of Rochester, No. AP 22-02075-PRW, 2022 WL 1638966, at *5 (Bankr. W.D.N.Y. May 23, 2022) (second emphasis added). Plaintiff respectfully submits that this represents an appropriate framework for resolving Plaintiff's motion, especially in light of the real possibility of other sources of recovery for Plaintiff's damages.

IV. If the Court Does Not Grant Plaintiff the Right to Continue its Litigation In New York Supreme Court against Maryhaven, Plaintiff Requests that Debtor's Schedule E/F Be Amended, or that Plaintiff Be Granted Leave to File a Proof of Claim in the Underlying Bankruptcy

If the Court does not grant the Plaintiff the relief requested herein, Plaintiff respectfully requests that the Court require the Debtor to file an updated Schedule E/F, or that Plaintiff be permitted to file a proof of claim, despite the fact that the bar date has passed. In the underlying bankruptcy proceeding (20-12345-mg), on October 9, 2020, the Debtor entered into the record its "Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual of *The Roman Catholic Diocese of Rockville Centre, New York*. Therein, in its "Schedule E/F: Creditors Who Have Unsecured Claims," the Debtor included extant claims of abuse victims, marked as "contingent", "unliquidated," and "disputed."[12] Since the commencement of the underlying bankruptcy proceedings in October 2020, many more cases brought by abuse victims against the Debtor and/or allegedly affiliated entities have come within the auspices of this bankruptcy – the

[12] *See, e.g.,* D.E. 57 in the underlying bankruptcy proceeding (20-12345-mg), at p. 5 of Schedule E/F (for ease of reference, this is page 110 of the filed PDF document).

list of stayed state court cases has ballooned from roughly 200 to over 500, as described above – but a review of the bankruptcy docket in case 20-12345 apparently does not indicate that there have been Amended Schedules filed that include an amended Schedule E/F.[13] To the extent that there is no updated Schedule E/F on record with this Court, Plaintiff requests that an Amended Schedule E/F be filed that lists Plaintiff's case as one of Debtor's contingent liabilities, or, in the alternative, that Plaintiff be permitted to file a Proof of Claim.

V. Notice of Planned State Court litigation

In light of the directives of this Court's prior Consent Orders, counsel for Verardi hereby provides notice that it will be amending its State Court pleading to add the present sole member of Maryhaven, IGHL as the principal defendant. Plaintiff will then be moving for severance as to Maryhaven and CH, permitting the Verardi matter to proceed solely against IGHL on the doctrine of "continuing tort."

[13] *See, e.g.,* D.E. 299, 01/08/2021 ("Amended Schedules filed: Schedule A/B - Non-Individual, Schedule G - Non-Individual"; D.E. 635, 07/28/2021 (Amended Schedules filed: Schedule A/B - Non-Individual); and D.E. 977, 02/11/2022 ("Amended Schedules filed: Schedule A/B - Non-Individual"). No other docket entries are titled with "Amended Schedules filed," nor does a search for "Schedule E/F" return any docket entries other than D.E. 57.

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully requests that the Court enter an order that lifts the stay enjoining prosecution of New York State Supreme Court case 616239/2021, or, in the alternative, requests that this Court enter an order that requires the Amendment of Debtor's Schedule E/F to list Plaintiff's claim as a contingent liability or allows Plaintiff Verardi to file a proof of claim in the underlying bankruptcy proceeding.

Dated: September 20, 2022

IAN KAUFMAN LAW LLC

/s/ Phillip Spinella
Phillip Spinella, Esq
Ian Kaufman, Esq.

3350 NE 12th Avenue
POB 23848
Oakland Park, Florida
33307
Ian@IanKaufmanLaw.com

888-200-3024

Counsel for Mary Verardi, guardian of James Verardi